



Decision

Matter of: Instrument Associates

File: B-256814

Date: August 1, 1994

W. Larry Brown for the protester.
Dick Buehne, for Amcan Instruments, an interested party.
Jerome Hamilton, Esq., Defense Logistics Agency, for the agency.
David Hasfurther, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest against agency's consideration of a faxed late bid is denied where the government's actions were the paramount cause of the bid's late receipt and the integrity of the procurement system would not be compromised by consideration of the bid.

DECISION

Instrument Associates protests the proposed termination of its contract awarded for pressure altimeters under Defense Reutilization and Marketing Service (DRMS) sale No. 31-4347. DRMS determined that because Amcan Instruments's high bid for the item had been improperly rejected as late, the award properly should be made to Amcan.

We deny the protest.

Sale No. 31-4347 required bidders to submit prices on any of 340 lots of electrical, electronic, and aircraft parts that they wished to purchase by 3 p.m. on February 28, 1994. Bids were to be opened at 8 a.m. on March 1. Facsimile bids were authorized.

Amcan's bid, dated February 18, was faxed to and received by the agency at approximately 5:16 p.m., local time, on February 18, as indicated by both the sender's and the agency's facsimile machine date stamps, which appear on all pages of the bid. The bid's receipt was promptly recorded in the agency log, and the bid's receipt was also recorded on the facsimile machine's activity report.

The preprinted government "item bid and award" page of the solicitation, which was the first page of Amcan's faxed bid, indicated, for some unexplained reason, that bids would be opened at 8 a.m. on February 17. Apparently because of this erroneous legend, Amcan's bid was marked "late" and was not processed, but was retained in other agency files. Instrument's bid, dated February 23, was received and was the highest bid opened at bid opening, and thus on March 1, Instrument received the award for the purchase of 300 pressure altimeters.

On March 18, after receipt of a bid abstract for the sale, Amcan called the contracting officer to inquire why Amcan's higher purchase price was not considered. Amcan also protested the agency's failure to consider its bid. The contracting officer searched the contract records to find Amcan's bid. He found that the fax log register showed receipt of a transmission from Amcan on February 18. He obtained from Amcan a copy of the faxed bid package sent on February 18. For unexplained reasons, on March 29, another contracting official sent the original bid to Amcan marked "late." Amcan immediately returned the original bid to the agency. After reviewing their files, the agency determined that Amcan's bid was timely received and had been improperly rejected as late. The agency intends to terminate the award to Instrument and make award to Amcan.

Instrument protests the agency's determination to accept Amcan's bid. Instrument argues that the agency had insufficient proof of receipt of Amcan's bid and that Amcan could have changed its bid after the agency returned it.

The terms of the sale provided that any bid not received timely by the contracting officer would be rejected unless it had been mailed or sent by telegraphic methods (telegram/mailgram/facsimile) and had been delivered to the address specified in the solicitation in sufficient time to have been timely received by the contracting officer, and would have been timely but for delay attributable to personnel of the sales office or their designees. In this case, the agency log shows that the bid of Amcan was received and its receipt recorded almost 10 days prior to the deadline set for bid submission. The log is consistent with the time/dates placed on the faxed bid by Amcan's facsimile machine, the agency facsimile machine, and the agency's facsimile machine activity management report for that machine. The technician in charge of receiving faxes stated that she ordinarily would have sent the bid to the sales contracting officer or his representative, but inexplicably (presumably because of the wrong government

¹This page was part of all bids.

designated bid opening date on the bid form) the bid was not processed in accordance with agency procedures and was ultimately returned to the bidder 3 weeks after the award and after receipt from Amcan of the duplicate copy of its bid.

A late bid can be considered for award if government mishandling after timely receipt at the agency was the paramount cause for its late receipt in the bid opening room, and consideration of the late bid would not compromise the integrity of the procurement process. See John J. Kirlin, Inc., B-250244, Dec. 15, 1992, 92-2 CPD ¶ 419. We agree that the contracting officer's late receipt of Amcan's bid was due solely to mishandling by agency personnel. Under agency procedures, a bid received 10 days prior to bid opening should have been timely received by the contracting officer. The contracting officer found adequate evidence that the original bid as now considered was received on the government facsimile machine on February 18 and had not been altered. From our review, we find no suggestion that the agency's determinations were unreasonable or that acceptance of the bid would compromise the integrity of the procurement system. Thus, the agency's consideration of Amcan's bid is unobjectionable.

The protest is denied.

/s/ Robert H. Hunter
for Robert P. Murphy
Acting General Counsel